

# **Appendix C**

## **32 CFR Parts 174, 175, and 176**

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# 32 CFR Part 174:

## Revitalizing Base Closure Communities

### Part 174—REVITALIZING BASE CLOSURE COMMUNITIES

Sec.

**174.1** Purpose.

**174.2** Applicability.

174.3 Definitions.

174.4 Policy.

174.5 Responsibilities.

Authority: 102 Stat. 2623, 104 Stat. 1808, 108 Stat. 4326, and 107 Stat. 1909

#### **Section 174.1 Purpose.**

(a) This part:

- (1) Establishes policy and assigns responsibilities under the President's Five-Part Plan, "A Program to Revitalize Base Closure Communities," July 2, 1993,<sup>1</sup> to speed the economic recovery of communities where military bases are slated to close.
- (2) Implements 107 Stat. 1909, National Defense Authorization Act for Fiscal Year 1994, Title XXIX and The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421).
- (3) Authorizes the publication of DoD 4165.66-M, "Base Reuse Implementation **Manual**," in accordance with DoD 5025.1-M, "DoD Directive System Procedures," August 1994.

#### **Section 174.2 Applicability.**

**This** part applies to the **Office** of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

#### **Section 174.3 Definitions.**

- (a) Closure. All missions of the installation have ceased or have been relocated. **All** personnel positions (military, civilian and contractor) have either been eliminated or relocated, except for personnel required for **caretaking**, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

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<sup>1</sup> Available from the Office of the Assistant Secretary of Defense, The Pentagon, Room 1D760, Washington, DC 20301-3300; email: "base\_reuse@acq.osd.mil"

- (b) *Realignment.* Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as “closed” for purposes of this part.

#### **Section 174.4 Policy.**

It is DoD policy to:

- (a) Help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases — more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly insuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation.
- (b) This part does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Pub. L. 103-160, or Pub. L. 103-421.

#### **Section 174.5 Responsibilities.**

- (a) The Under Secretary of Defense for Acquisition and Technology shall issue DoD Instructions as necessary, to further implement applicable **public** laws effecting base closure implementation, and shall monitor compliance with this part. All authorities of the Secretary of Defense in Pub. L. 103-421 (108 Stat. 4326 et seq.); Pub. L. 103-160, Title XXIX (107 Stat. 1909 et seq.); Pub. L. 101-510, Section 2905 (104 Stat. 1813 et seq.); and Pub. L. 100-526, Section 204 (102 Stat. 2627 et seq.), **are** hereby delegated to the Assistant Secretary of Defense for Economic Security and may be delegated further.
- (b) The Heads of the DoD Components shall advise their personnel with responsibilities related to base closures of the policies set forth in this part.

# 32 CFR Part 175:

## Revitalizing Base Closure Communities—Base Closure Community Assistance

*Note: The italicized text **was** promulgated as a Proposed Rule on February 21, 1997 (62 FR 79666).*

### **PART 175—REVITALIZING BASE CLOSURE COMMUNITIES-BASE CLOSURE COMMUNITY ASSISTANCE**

Sec.

175.1 Purpose.

175.2 Applicability.

175.3 Definitions.

175.4 Policy.

175.5 Responsibilities.

175.6 Delegations of authority.

175.7 Procedures.

Authority: 10 U.S.C. 2687 note.

#### **Section 175.1 Purpose.**

This part prescribes procedures to implement “Revitalizing Base Closure Communities” (32 CFR Part 174), the President’s five-part community reinvestment program, and real and personal property disposal to assist the economic **recovery** of communities impacted by base closures and realignments. The expeditious disposal of real and personal property will help communities get started with reuse early and is therefore critical to timely economic recovery.

#### **Section 175.2 Applicability.**

This part applies to the **Office** of the Secretary of Defense, the Military Departments, the **Chairman** of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, **and the** DoD Field Activities (hereafter referred to collectively as “the DoD Components”).

#### **Section 175.3 Definitions.**

(a) *Base Closure **Law**.* The provisions of Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526, 102 Stat. 2623, 10 U.S.C. 2687 note), or the Defense **Base Closure** and Realignment Act of 1990 (Pub. L. 101-510, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C 2687 note).

- (b) *Closure*. All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian, and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.
- (c) *Consultation*. Explaining and discussing an issue, considering objections, modifications, and alternatives; but without a requirement to reach agreement.
- (d) *Date of approval*. The date on which the authority of Congress to disapprove Defense Base Closure and Realignment Commission recommendations for closures or realignments of installations expires under Title XXIX of 104 Stat. 1808, as amended.
- (e) *Excess property*. Any property under the control of a Military Department that the Secretary concerned determines is not required for the needs of the Department of Defense.
- (f) *Realignment*. Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as “closed” for this document.
- (g) *Local Redevelopment Authority (LRA)*. Any authority or instrumentality established by state or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.
- (h) *Rural*. An area outside a Metropolitan Statistical Area.
- (i) *Surplus property*. Any excess property not required for the needs and the **discharge** of the responsibilities of federal agencies. Authority to make this determination, after screening with all federal agencies, rests with the Military Departments.
- (j) *Communities in the Vicinity of the Installation*. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.
- (k) *Installation*. A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.
- (l) *Similar use*. A use **that** is comparable to or essentially the same as the use under the original lease.

#### **Section 175.4 Policy.**

It is DoD policy to help **communities** impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases — more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual **goals** of quick property disposal and rapid job generation. This regulation does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Pub. L. 103-160, or Pub. L. 103-421, or *Title XXVII of Pub. L 104-106*.

#### **Section 175.5 Responsibilities.**

- (a) The *Deputy Under Secretary of Defense (Industrial Affairs and Installations)*, after coordination with the General Counsel of the Department of Defense and other **officials** as appropriate, may issue such guidance and instructions through the publication of a manual or other such *document as* may be necessary to implement Laws, Directives and Instructions on the retention or disposal of real and personal property at closing or realigning bases.

- (b) The Heads of the DoD Components shall ensure compliance with this part and guidance issued by the Assistant Secretary of Defense for Economic Security on revitalizing base closure communities.

### Section 175.6 Delegations of authority.

- (a) The authority provided by Sections 202 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483 and 484) for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator, GSA, to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; September 13, 1991; and, *September 1, 1995*<sup>2</sup>. Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.
- (b) Authorities delegated to the *Deputy Under Secretary of Defense (Industrial Affairs and Installations)*<sup>3</sup> by section 174.5 are hereby redelegate to the Secretaries of the Military Departments, unless otherwise provided within this Part or other DoD directive, instruction, manual or regulation. These authorities may be delegated further.

### Section 175.7 Procedures.

- (a) *Identification of interest in real property.*

- (1) To speed the economic recovery of communities affected by closures and realignments, it is DoD policy to identify DoD and federal interests in real property at closing and realigning military bases as quickly as possible. The Military Department having responsibility for the closing or realigning base shall identify such interests. The Military Department will keep the Local Redevelopment Authority (LRA) informed of these interests. This section establishes a uniform process, with specified **timelines**, for identifying real property which is excess to the Military Departments for use by other Department of Defense (DoD) Components and other federal agencies, and for the disposal of surplus property for various purposes.
- (2) Upon the President's submission of the recommendations for base closures and realignments to the Congress in accordance with the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), the Military Department shall send out a notice of potential availability to the other DoD Components, and other federal agencies. The notice of potential availability is a public document and should be made available in a timely basis, upon request. Federal agencies are encouraged to review this list, and to evaluate whether they may have a requirement for the listed properties. The notice of potential availability should describe the property and buildings that may be available for **transfer**. Installations which wholly or in part are comprised of withdrawn and reserved public domain lands should implement paragraph (a)(12) of this section at the same time.
- (3) Military Departments should consider LRA input in making determinations on the retention of property (size of cantonment area), if provided. Generally, determinations on the retention of property (or size of the cantonment area) should be completed prior to the date of approval of the closure or realignment.
- (4) Within one week of the date of approval of the closure or realignment, the Military Department shall issue a formal notice of availability to other DoD Components and federal agencies covering closing and realigning installation buildings and property **available** for transfer to other DoD Components and federal

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<sup>2</sup> Available from the *Base Closure and Community Reinvestment Office*, 400 Army Navy Drive, Suite 200, Arlington, VA 22202; e mail: [base\\_reuse@acq.osd.mil](mailto:base_reuse@acq.osd.mil)

<sup>3</sup> A Deputy Secretary of Defense memorandum of May 16, 1996, "*OUSD (Acquisition and Technology Reorganization*" disestablished **the office** of the Assistant Secretary of Defense for Economic Security **and** established the **office** of the Deputy Under Secretary of Defense (Industrial Affairs and Installations). Copies are available from the *Base Closure and Community Reinvestment Office*, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, e mail: [base\\_reuse@acq.osd.mil](mailto:base_reuse@acq.osd.mil)

agencies. Withdrawn public domain lands, which the Secretary of the Interior has determined are suitable for return to his jurisdiction, will not be included in the notice of availability,

- (5) Within 30 days of date of the notice of availability, any DoD Component or federal agency is required to provide a written, firm expression of interest for buildings and property. An expression of interest must explain the intended use and the corresponding requirement for the buildings and property.
- (6) Within 60 days of the date of the notice of availability, the DoD Component or federal agency expressing interest in buildings or **property** must submit an application for transfer of such property to the Military Department or federal agency.
  - (i) Within 90 days of the notice of availability, the FAA should survey the air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military Department, and to identify the facilities needed to support the National Airspace System. FAA requests for property to **manage** the National Airspace System will not be governed by paragraph (a)(9) of this section. Instead, such requests will be governed by the requirements of 41 CFR 101-47.308-2, to determine the transfer of property necessary for control of the airspace being relinquished by the Military Department.
- (7) The Military Department will keep the LRA informed of the progress in identifying interests. At the same time, the LRA is encouraged to contact federal agencies which sponsor public benefit transfers for information and technical assistance. The Military Department will provide points of contact at the federal agencies to the LRA.
- (8) Federal agencies and DoD Components are encouraged to discuss their plans and needs with the LRA, if an **LRA** exists. DoD Components and federal agencies are encouraged to notify the Military Department of the results of this non-binding consultation. The Military Departments, the Base Transition Coordinator, and the **Office** of Economic Adjustment Project Manager are available to help facilitate communication between the federal agencies, DoD Components, and the LRA.
- (9) A request for property from a DoD Component or federal agency must contain the following information:
  - (i) A completed GSA Form 1334, Request for Transfer (for requests from other DoD Components a DD Form 1354 is required). This must be signed by the head of the Component of the Department or Agency requesting the property. If the authority to acquire property has been delegated, a copy of the delegation must accompany the form;
  - (ii) A statement from the head of the requesting Component or agency that the request does not establish a new program (i.e., one that has never been reflected in a previous budget submission or Congressional action);
  - (iii) A statement that the requesting Component or agency has reviewed its real property holdings and cannot **satisfy** this requirement with existing property. This review must include all property under the requester's accountability, including permits to other federal agencies and outleases to other organizations;
  - (iv) A statement that the requested property would provide greater long-term economic benefits than acquisition of a new facility or other property for the program;
  - (v) A statement that the program for which the property is requested has long-term viability;
  - (vi) A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility;
  - (vii) A statement that the size of the property requested is consistent with the actual **requirement**;
  - (viii) A statement that fair market value reimbursement to the Military Department **will** be made within two years of the initial request for the property, unless this obligation is waived by the **Office** of Management and Budget and the Secretary of the Military Department or a public law specifically



provides for a non-reimbursable transfer. However, requests from the Military Departments or DoD Components do not need an **Office** of Management and Budget **waiver**; and,

- (ix) A statement that the requesting DoD Component or federal agency agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Military Department.
- (10) The Military Department will make its decision on a request from a federal agency, Military Department, or DoD Component based upon the following factors, from the Federal Property Management Regulations (41 CFR 101-47.201-2):
  - (i) The paramount consideration **shall** be the validity and appropriateness of the requirement upon which the proposal is based;
  - (ii) The proposed federal use is consistent with the highest and best use of the property;
  - (iii) The requested transfer will not have an adverse impact on the transfer of any remaining portion of the base;
  - (iv) The proposed transfer **will** not establish a new program or substantially increase the level of an agency's existing programs;
  - (v) The application offers fair market value for the property, unless waived;
  - (vi) The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Military Department and,
  - (vii) The proposed transfer is in the best interest of the Government.
- (11) When there are more than one acceptable applications for the same building or property, the Military Department responsible for the installation should first consider the needs of the military to carry out its mission. The Military Department should then consider the proposal's economic development and job creation potential and the LRA's comments, as well as the other factors in the determination of highest and best use.
- (12) Closing or realigning installations may contain "public domain lands" which have been withdrawn by the Secretary of the Interior from operation of the public land laws and reserved for the Defense Department's use. Lands deemed suitable for return to the public domain are not real property governed by the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 472), and are not governed by the property management and disposal provisions of the Base Closure and Realignment Act of 1988 (Pub. L. 100-526) and Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510). Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (**BLM**) unless the Secretary of the Interior has withdrawn the lands and reserved them for another federal agency's use.
  - (i) The Military Department responsible for a closing or realigning installation will provide the BLM with the notice of potential availability, as well as information about which, if any, public domain lands will be affected by the installation's closing.
  - (ii) The BLM will review the notice of potential availability to determine if any installations contain withdrawn public domain lands. Before the date of approval of the closure or realignment, the BLM will review its land records to identify any withdrawn public domain lands at the closing installations. Any records discrepancies between the BLM and Military Departments should be resolved within this time period. The BLM **will** notify the Military Departments as to **the** final **agreed** upon withdrawn and reserved public domain lands at installations.
  - (iii) Upon agreement as to what withdrawn and reserved public domain lands are affected at closing installations, the BLM will initiate a screening of DOI agencies to determine if these lands are suitable for programs of the Secretary of the Interior.

- (iv) Military Departments will transmit a Notice of Intent to Relinquish (See 43 CFR 2372) to the BLM as soon as it is known that there is no DoD Component interest in reusing the public domain lands. The BLM will complete the suitability determination screening process within 30 days of receipt of the Military Department's Notice of Intent to Relinquish. If a DoD Component is approved to reuse the public domain lands, the BLM will be notified and BLM will determine if the current authority for military use of these lands needs to be modified/amended.
  - (v) If BLM determines the land is suitable for return, they shall notify the Military Department that the intent of the Secretary of the Interior is to accept the relinquishment of the Military Department.
  - (vi) If BLM determines the land is not suitable, the lands should be disposed of pursuant to base closure law.
- (13) The Military Department should make its surplus determination within 100 days of the issuance of the notice of availability, and shall inform the LRA of the determination. If requested by the LRA, the Military Department may postpone the surplus determination for a period of no more than six months after the date of approval of the closure or realignment.
- (i) In unusual circumstances, extensions beyond six months can be granted by the *Deputy Under Secretary of Defense (Industrial Affairs and Installations)*.
  - (ii) Extensions of the surplus determination should be limited to the portions of the installation where there is an outstanding interest, and every effort should be made to make decisions on as much of the installation as possible, within the specified timeframes.
- (14) Once the surplus determination has been made, the Military Department shall:
- (i) Follow the procedures outlined in paragraph (b) of this section, if applicable.
  - (ii) Or, for installations approved for closure or realignment after October 25, 1994, and installations approved for closure or realignment prior to October 25, 1994, that have elected, prior to December 24, 1994, to come under the process outlined in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, follow the procedures outlined in paragraph (c) of this section.
- (15) Following the surplus determination, but prior to the disposal of property, the Military Department may, at its discretion, withdraw the surplus determination and evaluate a federal agency's late request for excess property.
- (i) Transfers under this paragraph shall be limited to special cases, as determined by the Secretary of the Military Department.
  - (ii) Requests shall be made to the Military Department, as specified under paragraphs (a)(8) and (a)(9) of this section, and the Military Department shall notify the LRA of such late request.
  - (iii) Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Military Department is reviewing a late request.
- (b) *Homeless screening for properties not covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.* -
- (1) This section outlines the procedure created for the identification of real property to fulfill the needs of the homeless by Sec. 2905(b)(6) of Pub. L. 101-510, as amended by Pub. L. 103-160 (referred to as the Pryor Amendment). It applies to BRAC 88,91, and 93 bases if the LRA did not elect to be subject to the alternate homeless assistance screening procedure contained in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.
  - (2) The Military Department shall sponsor a workshop or seminar in the communities which have closing or realigning bases, unless such a workshop or seminar has already been held. These workshops or seminars will be conducted prior to the Federal Register publication by HUD of available property to assist the homeless.

- (i) Not later than the date upon which the determination of surplus is made, the Military Department shall complete any determinations or surveys necessary to determine whether any building is available to assist the homeless. The Military Department shall then submit the list of **properties** available to assist the homeless to HUD.
- (ii) HUD shall make a determination of the suitability of each property to assist the homeless in accordance with the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11411, (the **McKinney Act**). Within 60 days from the date of receipt of the information from the Department of Defense, HUD shall publish a list of suitable properties that shall become available when the base closes or realigns.
- (iii) The listing of properties in the Federal Register under this procedure shall contain the following statement. (The listing of 1988 base closure properties that will be reported to HUD shall refer to Sec. 204(b)(6) of Pub. L. 100-526 instead of Sec. 2905(b)(6) of Pub. L. 101-510):
 

The properties contained in this listing are closing and realigning military installations. This report is being accomplished pursuant to Sec. 2905(b)(6) of Pub. L. 101-510, as amended by Pub. L. 103-160. In accordance with Sec. 2905(b)(6), this property is subject to a one-time publication under the **McKinney Act** after which property not provided to homeless assistance providers will not be published **again** unless there is no expression of interest submitted by the local redevelopment authority in the one-year period following the end of the McKinney screening process pursuant to this publication.
- (3) Providers of assistance to the homeless **shall** then have 60 days in which to submit expressions of interest to HHS in any of the listed properties. If a provider indicates an interest in a listed property, it shall have an additional 90 days after submission of its written expression of interest to submit a formal application to HHS, a period which HHS can extend. HHS shall then have 25 days after receipt of a completed application to review and complete all actions on such applications.
- (4) During this screening process (from 60 to 175 days following the Federal Register publication, as appropriate), disposal agencies **shall** take no final disposal action or allow reuse of property that HUD has determined suitable and that may become available for homeless assistance unless and until:
  - (i) No timely expressions of interest from providers are received by HHS;
  - (ii) No timely applications from providers expressing interest are received by HHS; or,
  - (iii) HHS rejects all applications received for a specific property.
- (5) The Military Department should promptly inform the affected LRA, the Governor of the State, local governments, and agencies which support public benefit conveyances of the date the surplus property will be available for community reuse **if**:
  - (i) No provider expresses an interest to HHS in a property with the allotted 60 days;
  - (ii) There are expressions of interest by homeless assistance providers, but no application is received by **HHS** from such a provider within the subsequent 90-day application period (or within the longer application period if HHS has granted an extension); or
  - (iii) HHS rejects **all** applications for a specific property at any time **during the** 25 day HHS review period.
- (6) The LRA shall have 1 year from the date of notification under paragraph (b)(5) to submit a written expression of interest to incorporate the remainder of the property into a redevelopment plan.
- (7) During the allotted 1-year period for the LRA to submit a written expression of interest for the property, surplus properties not already approved for homeless reuse shall not be available for homeless assistance. The surplus properties will also not be advertised by HUD as suitable **during** these 1-year periods. The surplus property may be available for interim leases consistent with paragraph (g) of this section.

(8) If the LRA does not express in writing its interest in a specific property during the allotted 1-year period or it notifies the Military Department it is not interested in the property, the disposal agency shall again notify HUD of the date of availability of the property for homeless assistance. HUD may then list the property in the Federal Register as suitable and available after the base closes following the procedures of the McKinney Act.

(c) *Reserved* Additional regulations will be promulgated in a publication of the Departments of Defense and Housing and Urban Development to address state and local screening and approval of redevelopment plans for installations covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421).

(d) *Local Redevelopment Authority and the Redevelopment Plan.*

(1) The LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. Generally, there will be one recognized LRA per installation.

(2) The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives. If applicable, the plan should consider notices of interest received under the provisions of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421). This section shall not be construed to require a plan that is enforceable under state and local land use laws, nor is it intended to create any exemption from such laws.

(3) The Military Department will develop a disposal plan and complete the appropriate environmental documentation no later than 12 months from receipt of the redevelopment plan. The local redevelopment plan will generally be used as the basis for the proposed action in conducting environmental analyses required by under the National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4332 et seq.). The disposal plan will specifically address the methods for disposal of property at the installation, including conveyances for homeless assistance, public benefit transfers, public sales, Economic Development Conveyances and other disposal methods.

(i) In the event there is no LRA recognized by DoD and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under paragraph (a)(13) of this section, (unless an extension of time has been granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations)), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

(e) *Economic development conveyances.*

(1) Section 2903 of Pub. L. 103-160 gives the Secretary of Defense the authority to transfer property to local redevelopment authorities for consideration in cash or in kind, with or without initial payment, or with only partial payment at time of transfer, at or below the estimated present fair market value of the property. This authority creates an additional tool for local communities to help spur economic opportunity through a new real property conveyance method specifically designed for economic development, referred to as the “Economic Development Conveyance” (EDC).

(2) The EDC can only be used when other surplus federal property disposal authorities for the intended land use cannot be used to accomplish the necessary economic redevelopment.

(3) An LRA is the only entity able to receive property under an EDC.

(4) A properly completed application will be the basis for a decision on whether an LRA will be eligible for an EDC. An application should be submitted by the LRA after a Redevelopment Plan is adopted by the LRA. The Secretary of the Military Departments shall establish a reasonable time period for submission of the EDC application after consultation with the LRA. The Military Departments will review the applications and make a decision whether to make an EDC based on the criteria specified in paragraph (e)(7) of this section. The terms and conditions of the EDC will be negotiated between the Military

Departments and the LRA. Bases in rural areas shall be conveyed with no consideration if they meet the standards in paragraph (f),(5) of this section.

- (5) The application should explain why an EDC is necessary for economic redevelopment and job creation. The application should also contain the following elements:
  - (i) A copy of the adopted redevelopment plan.
  - (ii) A project narrative including the following:
    - (A) A general description of property requested.
    - (B) A description of the intended uses.
    - (C) A description of the economic impact of closure or realignment on the local communities.
    - (D) A description of the financial condition of the community and the prospects for redevelopment of the property.
    - (E) A statement of how the EDC is consistent with the overall Redevelopment Plan.
  - (iii) A description of how the EDC will contribute to short- and long-term job creation and economic redevelopment of the base and community, including projected number, and type of new jobs it will assist in creating.
  - (iv) A business/operational plan for the EDC parcel, including such elements as:
    - (A) A development timetable, phasing schedule and cash flow analysis.
    - (B) A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over a fifteen-year period, the proposed consideration or payment to the Department of Defense, and the estimated present fair market value of the property.
    - (c) A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel.
    - (D) Local investment and proposed financing strategies for the development.
  - (v) A statement describing why other authorities — such as public or negotiated sale and public benefit transfers for education, parks, public health, aviation, historic monuments, prisons, and wildlife conservation — cannot be used to accomplish the economic development and job creation goals.
  - (vi) If a transfer is requested for less than the estimated present fair market value (“FMV”), with or without initial payment at the time of transfer, then a statement should be provided justifying the discount. The statement should include the amount and form of the proposed consideration, a payment schedule, the general terms and conditions for the conveyance, and projected date of conveyance.
  - (vii) A statement of the LRA’s **legal** authority to acquire and dispose of the property.

In addition to the elements previously mentioned, after Military Department review of the application, additional information may be requested to allow for a better evaluation of the application.

- (6) Upon receipt of an application for an EDC, the Secretary of the Military Department **will** determine whether an EDC is needed to spur economic development and job creation and examine whether the terms and conditions proposed are fair and reasonable. The Military Department may **also** consider information independent of the application, such as views of other federal agencies, appraisals, caretaker costs and other relevant material. The Military Department may propose **and** negotiate any alternative terms or conditions that it considers necessary.

- (7) The following factors will be considered, as appropriate, in evaluating the application and the terms and conditions of the proposed transfer, including price, time of payment and other relevant methods of compensation to the federal government.
- (i) Adverse economic impact of closure or realignment on the region and potential for economic recovery after an EDC.
  - (ii) Extent of short- and long-term job generation.
  - (iii) Consistency with overall Redevelopment plan.
  - (iv) Financial feasibility of the development, including market analysis and need and extent of proposed infrastructure and other investments.
  - (v) Extent of state and local investment, level of risk incurred, and the LRA's ability to implement the plan.
  - (vi) Current local and regional real estate market conditions.
  - (vii) Incorporation of other federal **agency** interests and concerns, and applicability of, and conflicts with, other federal surplus property disposal authorities.
  - (viii) Relationship to the **overall Military** Department disposal plan for the installation.
  - (ix) Economic benefit to the federal government, including protection and maintenance cost savings and anticipated consideration from the transfer.
  - (x) Compliance with applicable federal, state, and local laws and regulations.
- (8) Before making an EDC, the Military Department must prepare an estimate of the present fair market value of the property, which may be expressed as a range of values. The Military Department shall consult with the LRA on valuation assumptions, guidelines and on instructions given to the person(s) making the estimation of value. The Military Department is fully responsible for completion of the valuation. The Military Department, in preparing the estimate of present fair market value shall include, to the extent practicable, the uses identified in the local redevelopment plan.
- (f) *Consideration for economic development conveyances,*
- (1) For conveyances made pursuant to section 175.7 (e), Economic development conveyances, the Secretary of the Military Department will review the application for an EDC and negotiate the terms and conditions of each transaction with the LRA. The Military Departments will have the discretion and flexibility to enter into agreements that specify the form, amount, and payment schedule. The consideration may be at or below the estimated present fair market value, with or without initial payment, in cash or in-kind and paid over time.
  - (2) An EDC must be one of the two following types of agreements:
    - (i) Consideration within the estimated **range** of present fair market value, as determined by the Secretary of the Military Department.
    - (ii) Consideration below the estimated range of present fair market value, when proper justification is provided and when the Secretary of the Military Department determines that a discount is necessary for economic redevelopment and job creation.
  - (3) If the consideration under an EDC is within the range of value listed in paragraph (f.) (2)(i) of this section, the amount paid in the future should take into account the time value of money and include repayment of interest. Any transaction that waives or delays interest payments **will be** considered as a transaction below the present fair market value under **paragraph (f)(2)(ii)** of this section, and **as** such must be justified as **necessary** for economic development and job creation.

- (4) Additional provisions may be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon compensation, including such items as pre-determined release prices, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions.
- (5) In a rural area, as defined by this rule, any EDC approved by the Secretary of the Military Department shall be made without consideration if the base closure will have a substantial adverse impact on the economy of the communities in the vicinity of the installation and on the prospect for their economic recovery.
- (6) In those instances in which an EDC is made for consideration below the range of the estimated present fair market value of the property — or if the estimated present fair market value is expressed as a range of values, below the lowest value in that range — the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained. Additionally, the Military Departments must prepare a written statement explaining why other federal property transfer authorities could not be used to generate economic redevelopment and job creation.

(g) *Leasing of real property.*

- (1) Leasing of real property prior to the final disposition of closing and realigning bases may facilitate state and local economic adjustment efforts and encourage economic redevelopment.
- (2) In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretaries of the Military Departments may also lease real and personal property located at a military installation to be closed or realigned under a base closure law, pending final disposition, for less than fair market value if the Secretary concerned determines that:
  - (i) A public interest will be served as a result of the lease; and
  - (ii) The fair market value of the lease is unobtainable, or not compatible with such public benefit.
- (3) Pending final disposition of an installation, the Military Departments may grant interim leases which are short-term leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Military Department will generally lease to the LRA but can lease property directly to other entities. If the interim **lease** is entered into prior to completion of the final disposal decisions under the National Environmental Policy Act (**NEPA**) process, the term may be for up to five years, including options to renew, and may contain restrictions on use. Leasing **should** not delay the **final** disposal of the property. After completion of the final disposal decisions, the term of the **lease** maybe longer than five years.
- (4) If the property is leased for less than fair market value to the LRA and the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases will be applied by the lessee to the protection, maintenance, repair, improvement and costs related to the property at the installation consistent with 10 U.S.C. 2667.

(h) *Personal property.*

- (1) This section outlines procedures to allow transfer of personal property to the LRA for the effective implementation of a community reuse plan.
- (2) Each Military Department and DoD Component, as appropriate, will take an inventory of the personal property, including its condition, within 6 months after the date of approval of closure or **realignment**. This inventory will be **limited** to the personal property located on **the** real property to be disposed of by the Military Department or DoD Component. The inventory will be **taken** in consultation with LRA officials. If there is no LRA, the Military Department will offer to provide a consultation for the local government in whose jurisdiction the installation is wholly located or for a **local** government agency or a state government **agency** designated for that purpose by the chief executive **officer** of the state. Based on these consultations, the base commander will determine the items or category of items that have the potential to enhance the reuse of the real property.

- (3) Except for property subject to the exemptions in paragraph (h)(5) of this section, personal property with potential to enhance the reuse of the real estate shall remain at a base being closed or realigned until disposition is otherwise determined by the Military Department. This determination will be made no earlier than 90 days after the Military Department receives an adopted redevelopment plan or when notified by the LRA that there will be no redevelopment plan.
- (4) National Guard property demonstrably identified as being purchased with state funds is not available for reuse planning or subject to transfer for redevelopment purposes, unless so identified by the state property officer. National Guard property purchased with federal funds is subject to inventory and may be made available for redevelopment planning purposes.
- (5) Personal property may be removed upon approval of the base commander or higher authority, within and as prescribed by the Military Department, after the inventory required in paragraph (h)(2) of this section has been sent to the redevelopment authority, when:
  - (i) The property, other than ordinary fixtures, is required for the operation of a transferring unit, function, component, weapon, or weapons system;
  - (ii) The property is required for the operation of a unit, function, component, weapon, or weapon system at another installation within the Military Department, subject to the following conditions:
    - (A) Ordinary fixtures, including but not limited to such items as blackboards, sprinklers, lighting fixtures, and electrical and plumbing systems, shall not be removed under paragraph (h)(5)(ii) of this section; and,
    - (B) Other personal property may be removed under paragraph (h)(5)(ii) of this section only after the Military Department has consulted with the LRA and, with respect to disputed items, upon the approval of an Assistant Secretary of the Military Department.
  - (iii) The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). This property consists of classified items; nuclear, biological, chemical items; weapons and munitions; museum property or items of significant historic value that are maintained or displayed on loan; and similar military items;
  - (iv) The property is not required for the reutilization or redevelopment of the installation (as jointly determined by the Military Department concerned and the redevelopment authority);
  - (v) The property is stored at the installation for distribution (including spare parts or stock items). This property includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place;
  - (vi) The property meets known requirements of an authorized program of another federal department or agency that would have to purchase similar items, and the property is the subject of a written request received from the head of the other Department or Agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. In this context, “purchase” means the federal department or agency intends to obligate funds in the current quarter or next six fiscal quarters. The federal department or agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property;
  - (vii) The property belongs to nonappropriated fund instrumentalities (NAFI) and other non-Defense Department activities. Such property may be removed at the Military Departments’ discretion because it does not belong to the Defense Department and, therefore, it may not be transferred to the redevelopment authority under this section. For NAFI property, separate arrangements for communities to purchase such property are possible and may be negotiated with the Military Department concerned; and,
  - (viii) The property is needed elsewhere in the national security interest of the United States as determined by the Secretary of the Military Department concerned. This authority may not be redelegate



below the level of an Assistant Secretary. In exercising this authority, the Secretary may transfer the property to any entity of the Department of Defense or other federal agency.

- (6) In addition to the exemptions in paragraph (h)(5) of this section, the Military Department or DoD Component is authorized to substitute an item similar to one requested by the redevelopment authority,
- (7) Personal property not subject to the exemptions in paragraph (h)(5) of this section may be conveyed to the redevelopment authority as part of an economic development conveyance for the real property if the Military Department makes a finding that the personal property is necessary for the effective implementation of the redevelopment plan.
- (8) Personal property may also be conveyed separately to the LRA under an economic development conveyance for personal property. This type of economic development conveyance can be made if the Military Department determines that the transfer is necessary for the effective implementation of a redevelopment plan with respect to the installation. Such determination shall be based on the LRA's timely application for the property, which should be submitted to the Military Department upon completion of the redevelopment plan. The application must include the LRA's agreement to accept the personal property after a reasonable period. The transfer will be subject to reasonable limitations and conditions on use.
  - (i) The Military Department will restrict the LRA's ability to acquire personal property at less than fair market value solely for the purpose of releasing or reselling it, unless the LRA will lease or sell the personal property to entities which will place it into productive use in accordance with the redevelopment plan. The LRA must retain personal property conveyed under an EDC for less than fair market value for at least one year if it is valued at less than \$5,000, or at least two years if valued at more than \$5,000. Any proceeds from such leases or sales must be used to pay for protection, maintenance, repair or redevelopment of the installation. The LRA will be required to certify its compliance with the provisions of this section at the end of each fiscal year for no more than two years after transfer. The certification may be subject to random audits by the Government.
- (9) Personal property that is not needed by the Military Department or a federal agency or conveyed to a redevelopment authority (or a state or local jurisdiction in lieu of a local redevelopment authority) will be transferred to the Defense Reutilization and Marketing Office for processing in accordance with 41 CFR 101-43 through 10145, "Federal Property Management Regulations," and DoD 4160.21 -M.<sup>4</sup>
- (10) Useful personal property determined to be surplus to the needs of the federal government by the Defense Reutilization and Marketing Office and not qualifying for transfer to the redevelopment authority under an economic conveyance may be donated to the community or redevelopment authority through the appropriate State **Agency** for Surplus Property (**SASP**). Personal property donated under this procedure must meet the usage and control requirements of the applicable SASP. Property subsequently not needed by the community or redevelopment authority shall be disposed of as required by its SASP.
  - (i) *Maintenance, utilities, and services.*
    - (1) Facilities and equipment located on bases **being** closed are often important to the eventual reuse of the base. This section provides maintenance procedures to preserve and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates base redevelopment.
    - (2) In order to ensure quick reuse, the Military Department, in consultation with the LRA, will establish initial levels of maintenance and repair needed to aid redevelopment and to protect the property for the time periods set forth below. Where agreement between the Military Department and the LRA cannot be reached, the **Secretary** of the Military Department **will** determine the required levels of maintenance and repair and its duration. In no case will these initial levels of maintenance:

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<sup>4</sup> Copies maybe obtained from the Defense Logistics Agency, Attn: DLA-XPD, Alexandria, VA 22304-6100

- (i) Exceed the standard of maintenance and repair in effect on the date of closure or realignment approval;
  - (ii) Be less than maintenance and repair required to be consistent with federal government standards for excess and surplus properties (i.e., 41 CFR 101-47.402 and 41 CFR 101-47.4913); or,
  - (iii) Require any property improvements, including construction, alteration, or demolition, except when the-demolition is required for health, safety, or environmental purposes, or is economically justified in lieu of continued maintenance expenditures.
- (3) The initial levels of maintenance and repair **shall** be tailored to the redevelopment plan, and shall include the following provisions:
  - (i) The facilities and equipment that **are** likely to be utilized in the near term will be maintained at levels that shall prevent undue deterioration and allow transfer to the LRA.
  - (ii) The scheduled closure or realignment date of the installation will not be delayed.
- (4) The Military Department will not reduce the agreed upon initial maintenance and repair levels unless it establishes a new arrangement (e.g., termination of caretaking upon leasing of property) in consultation with the LRA.
- (5) The Military Department will determine the length of time it will maintain the initial levels of maintenance and repair for each closing or realigning base. This determination will be based on factors such as the closure/realignment date and the timing of the completion of the National Environmental Policy Act (NEPA) documentation on the proposed disposal (such as a finding of no significant impact and disposal decision following an environmental assessment or the record of decision following an environmental impact statement).
  - (i) For a base that has not closed prior to the publication of this rule, and where the Military Department has completed the NEPA analysis on the proposed disposal before the operational closure of that base, the time period for the initial levels of maintenance and repair normally will extend no longer than one year after operational closure of the base.
  - (ii) For a base that has not closed prior to the publication of this rule, and where the base's operational closure precedes the completion of the NEPA analysis on the proposed disposal, the time period for the initial levels of maintenance and repair will normally extend no longer than one year after operational closure or 180 days after the Secretary of the **Military** Department approves the NEPA analysis.
  - (iii) For a base that closed prior to the publication of this rule, the time period for the existing levels of maintenance will normally extend no longer than one year from the date of the publication of this rule.
- (6) The Military Department may extend the time period for the initial levels of maintenance and repair for property still under its control for an additional period, if the Secretary of the Military Department determines that the Local Redevelopment Authority is actively implementing its redevelopment plan, and such levels of maintenance are justified.
- (7) Once the time period for the initial or extended levels of maintenance and repair elapses, the Military Department will reduce the levels of maintenance and repair to levels consistent with federal government **standards** for excess and surplus properties (i.e., 41 CFR 101-47.402 and 41 CFR 101-47.4913).
- (j) Note: This space has been reserved for regulations implementing Section 2908 of the National Defense Authorization Act for **FY 1994** regarding the transfer of real property or facilities to persons paying the cost of environmental restoration activities on the property. A Proposed Rule was published on April **6, 1994 (59 FR 16157)** but a Final Rule has not been promulgated.
- (k) *Leaseback of property at base closure and realignment sites.*

- (1) Section 2905(b)(4)(c) of Pub. L. 101-510, 10 U.S. C. 2687 note (**BRAC 1990**), as added by section 28.37 of Pub. L. 104-106, gives the Secretary of Defense the authority to transfer property that is still needed by a Federal Department or Agency **to** an LRA provided the LRA agrees to lease the property back to the Federal Department or Agency in accordance with all statutory and regulatory guidance. The purpose of this authority, *hereinafter* referred to as a “**leaseback**,” is to enable the LRA to obtain ownership of the property pursuant to the **BRA C** process while still ensuring that the Federal need for use of the property is accommodated.
- (2) Subject to **BRAC 1990** and this part, the decision whether to transfer property pursuant to a **leaseback** rests with the relevant **military** department. However, a military department may only transfer property via a **leaseback** if the Federal entity that needs the property agrees to the **leaseback** arrangement.
- (3) If for any reason property cannot be transferred pursuant to a **leaseback** (e.g., the relevant Federal Agency prefers ownership, the LRA and the Federal entity cannot agree on terms of the lease, or the military department determines that a **leaseback** would not be in the Federal interest), such property shall remain in Federal ownership unless and until the relevant landholding entity determines that it is surplus pursuant to the Federal Property Management Regulations.
- (4) If a building or structure is proposed for transfer under this authority, that which is leased back to **the Federal Department or Agency** maybe all or a portion of that building or structure.
- (5) The **leaseback** authority maybe used at all installations approved for closure or realignment under **BRAC 1990**.
- (6) Transfers under this authority must be to an LRA.
- (7) Transfers under this authority may be by lease **in** furtherance of conveyance or deed. A lease in furtherance of conveyance is appropriate only in those circumstances where deed transfer cannot be accomplished because the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (**CERCLA**) (42 U.S. C. 9601, et seq. ) for such transfer have not been met. The lease in furtherance of conveyance or accompanying contract shall include a provision stating that the LRA agrees to take title to the property when requirements for the transfer have been satisfied.
- (8) The **leaseback** authority can be **used** to transfer property that is needed either by existing Federal tenants or by Federal Departments or Agencies desiring to locate onto the property after operational closure. The Military Department that is closing or realigning the installation may not transfer property to an **LRA** under this authority and lease it back unless:
  - (i) The Military Department is acting in an Executive Agent capacity on **behalf of** a Defense Agency that certifies that a **leaseback** is in the interest of that Defense Agency; or,
  - (ii) The Secretary of the Military Department **certifies** that a **leaseback** is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign the installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.
- (9) Property eligible for a **leaseback** is not surplus because it is still needed by a Federal entity. However, notwithstanding that the property is not surplus and that the LRA would not otherwise have to include such property in its redevelopment plan, the LRA should include the proposed **leaseback** of property in its redevelopment **plan**, taking into account the planned Federal use of such property.
- (10) The terms of the LRA’s lease to the Federal entity should afford the Federal Department or Agency rights as close to those associated with ownership of the **property** as is practicable. The requirements of the General Services Acquisition Regulation (**GSAR**) (48 CFR Part 570) are not applicable to the lease, but provisions in the **GSAR** maybe used to the extent they are consistent with this Part. The terms of the lease are negotiable subject to the following:

- (i) *The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal Department or Agency concerned. The lease term should be based on the needs of the Federal entity.*
  - (ii) *The lease, or any renewals or extensions thereof, shall not require rental payments.*
  - (iii) *The lease shall not require the Federal Government to pay the LRA or other local government entity for municipal services including fire and police protection.*
  - (iv) *The Federal Department or Agency concerned maybe responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal Department or Agency is to be accomplished through the use of Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements.*
  - (v) *The lease shall include a provision prohibiting the LRA from transferring ownership rights to another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal Department or Agency occupying the leaseback property.*
  - (vi) *The lease shall include a provision specifying that if the Federal Department or Agency concerned no longer needs the property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal Department or Agency using the leased property for a use similar to the use under the lease.*
    - (A) *The General Services Administration shall assist with identifying other Federal interest in leasing the property.*
    - (B) *Prior to exercising such provision, the Federal Department or Agency shall consult with the LRA concerned, or the elected body with jurisdiction over the property if the LRA no longer exists.*
  - (vii) *The terms of the lease shall provide that the Federal Department or Agency may repair, improve, and maintain the property at its expense without the approval of the LRA.*
- (11) *Conveyance to an LRA under this authority shall be in one of the following ways:*
- (i) *Lease back property that is to be conveyed under an Economic Development Conveyance (EDC) shall be conveyed as part of the EDC in accordance with the existing EDC procedures and § 175.7(k)(11)(ii)(B)(4). The LRA shall submit the following in addition to the application requirements outlined in § 175.7(e)(5):*
    - (A) *A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;*
    - (B) *A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,*
    - (C) *A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.*
  - (ii) *Leaseback property not associated with property to be conveyed under an EDC shall be conveyed in accordance with the following procedures:*
    - (A) *As soon as possible after the LRA's submission of its redevelopment plan to the DoD and HUD, the LRA shall submit a request for a leaseback to the Military Department. The Military Department may impose additional requirements as necessary, but at a minimum, the request shall contain the following:*
      - (1) *A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;*

- (2) *A written statement signed by an authorized representative of the Federal entity that it agrees to accept a **leaseback** of the property; and,*
- (3) *A statement explaining why a **leaseback** is necessary for the long-term economic redevelopment of the installation property.*
- (B) *The transfer may be for consideration at or below the estimated present fair market value. In those instances in which the property is conveyed for consideration below the estimated present fair **market** value, the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained.*

  - (1) *In a rural area, the **transfer** shall comply with §175.7(f)(5).*
  - (2) *Payment may be in cash or in-kind.*
  - (3) *The Military Department shall determine the estimated present fair market value of the property before transfer under this authority.*
  - (4) *The exact amount of consideration, or the formula to be used to determine that consideration, as well as the schedule for payment of consideration must be agreed upon in writing before transfer under this authority.*

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# 32 CFR Part 176: Revitalizing Base Closure Communities and Community Assistance---Community Redevelopment and Homeless Assistance

## PART 176- REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE -- COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

Sec.

**176.1** Purpose.

176.5 Definitions.

176.10 Applicability.

176.15 Waivers and extensions of deadlines.

176.20 Overview of the process.

176.25 HUD's negotiations and consultations with the LRA.

176.30 LRA application.

176.35 HUD's review of the application.

176.40 Adverse determinations.

176.45 Disposal of buildings and property.

Authority: 10 U.S.C. 2687 note.

### Section 176.1 Purpose.

**This** part implements the Base Closure Community **Redevelopment** and Homeless Assistance **Act**, as amended (10 U.S.C. **2687** note), which instituted a new community-based process for addressing the needs of the homeless at base closure and realignment sites. In this process, Local Redevelopment Authorities (**LRAs**) identify interest from homeless providers in installation property and develop a redevelopment plan for the installation that balances the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities. The Department of Housing and Urban Development (HUD) reviews the LRA's plan to see that an appropriate balance is achieved. This part also implements the process for identifying interest from State and local entities for property under a public benefit

## 32 CFR Part 176: Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance

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transfer. The LRA is responsible for concurrently identifying interest from homeless providers and State and local entities interested in property under a public benefit transfer.

### Section 176.5 Definitions.

- (a) **CERCLA.** Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq).
- (b) **Communities *in the vicinity of the installation.*** The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation. If no LRA is formed at the local level, and the State is serving in that capacity, the communities in the vicinity of the installation are deemed to be those political jurisdiction(s) (other than the State) in which the installation is located.
- (c) ***Continuum of care system.***
  - (1) A comprehensive homeless assistance system that includes:
    - (i) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless;
    - (ii) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;
    - (iii) Transitional housing with appropriate supportive services to help those homeless individuals and families who are not prepared to make the transition to independent living;
    - (iv) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and,
    - (v) Any other activity that clearly meets an identified need of the homeless and fills a **gap** in the continuum of care.
  - (2) Supportive services are services that enable homeless persons and families to move through the continuum of care toward independent living. These services include, but are not limited to, case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements, and referral to veterans services and legal services.
- (d) ***Consolidated Plan.*** The plan prepared in accordance with the requirements of 24 CFR part 91.
- (e) ***Day.*** One calendar day including weekends and holidays.
- (f) ***DoD.*** Department of Defense.
- (g) ***HHS.*** Department of Health and Human Services.
- (h) ***Homeless person.***
  - (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and,
  - (2) An individual or family who has a primary nighttime residence that is:
    - (i) A supervised publicly or privately operated shelter designed to provide **temporary** living accommodations (including welfare hotels, congregate shelters and transitional housing for the mentally ill);
    - (ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or,



- (iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.
- (3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.
- (i) *HUD*. Department of Housing and Urban Development.
- (j) *Installation*. A base, camp, ~~post~~, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of DoD, including any leased facility, that is approved for closure or realignment under the Base Closure and Realignment Act of 1988 (Pub. L. 100-526), as amended, or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510), as amended (both at 10 U.S.C. §2687, note).
- (k) *Local redevelopment authority (LRA)*. Any authority or instrumentality established by State or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.
- (l) *NEPA*. National Environmental Policy Act of 1969 (42 U.S.C. 4320).
- (m) *OEA*. Office of Economic Adjustment, Department of Defense.
- (n) *Private nonprofit organization*. An organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.
- (o) *Public benefit transfer*. The transfer of surplus military property for a specified public purpose at up to a 100 percent discount in accordance with 40 U.S.C. 471 et. seq. or 49 U.S.C. 47151-47153.
- (p) *Redevelopment plan*. A plan that is agreed to by the LRA with respect to the installation and provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.
- (q) *Representative(s) of the homeless*. A State or local government agency or private nonprofit organization, including a homeless assistance planning board, that provides or proposes to provide services to the homeless.
- (r) *Substantially equivalent*. Property that is functionally suitable to substitute for property referred to in an approved Title V application. For example, if the representative of the homeless had an approved Title V application for a building that would accommodate 100 homeless persons in an emergency shelter, the replacement facility would also have to accommodate 100 at a comparable cost for renovation.
- (s) *Substantially equivalent funding*. Sufficient funding to acquire a substantially equivalent facility.
- (t) *Surplus property*. Any excess property not required for the needs and the discharge of the responsibilities of all Federal Agencies. Authority to make this determination, after screening with all Federal Agencies, rests with the Military Departments.
- (u) *Title V*. Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (42 U.S.C. 11411 ) as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160).
- (v) *Urban county*. A county within a metropolitan area as defined at 24 CFR part 570.3.

### Section 176.10 Applicability.

- (a) General. This part applies to all installations that are approved for closure/realignment by the President and Congress under Pub. L. 101-510 after October 25, 1994.

## 32 CFR Part 176: Revitalizing Base Closure Communities and Community Assistance-Community Redevelopment and Homeless Assistance

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- (b) Request for inclusion under this process. This part also applies to installations that were approved for closure/realignment under either Pub. L. 100-526 or Pub. L. 101-510 prior to October 25, 1994 and for which an LRA submitted a request for inclusion under this part to DoD by December 24, 1994. A list of such requests was published in the Federal Resister on May 30, 1995 (60 FR 28089).
- (1) For installations with Title V applications pending but not approved before October 25, 1994, the LRA shall consider and specifically address any application for use of buildings and property to assist the homeless that were received by HHS prior to October 25, 1994, and were pending with the Secretary of HHS on that date. These pending requests shall be addressed in the LRA's homeless assistance submission.
- (2) For installations with Title V applications approved before October 25, 1994, where there is an approved Title V application, but property has not been assigned or otherwise disposed of by the Military Department, the LRA must ensure that its homeless assistance submission provides the Tide V applicant with:
- (i) The property requested;
  - (ii) Properties, on or off the installation, that are substantially equivalent to those requested;
  - (iii) Sufficient funding to acquire such substantially equivalent properties;
  - (iv) Services and activities that meet the needs identified in the application; or,
  - (v) A combination of the properties, funding, and services and activities described in 5176.10(b)(2)(i)-(iv) of this part.
- (c) Revised Title V process. All other installations approved for closure or realignment under either Pub. L. 100-526 or Pub. L. 101-510 prior to October 25, 1994, for which there was no request for consideration under this part, are covered by the process stipulated under Title V. Buildings or property that were transferred or leased for homeless use under Title V prior to October 25, 1994, may not be reconsidered under this part.

### Section 176.15 Waivers and extensions of deadlines.

- (a) After consultation with the LRA and HUD, and upon a finding that it is in the interest of the communities affected by the closure/realignment of the installation, DoD, through the Director of the Office of Economic Adjustment, may extend or postpone any deadline contained in this part.
- (b) Upon completion of a determination and finding of good cause, and except for deadlines and actions required on the part of DoD, HUD may waive any provision of §§176.20 through 176.45 of this part in any particular case, subject only to statutory limitations.

### Section 176.20 Overview of the process.

- (a) Recognition of the LRA. As soon as practicable after the list of installations recommended for closure or realignment is approved, DoD, through OEA, will recognize **an** LRA for the installation. Upon recognition, OEA shall publish the name, address, and point of contact for the LRA in the Federal Resister and in a newspaper of general circulation in **the** communities in the vicinity of the installation.
- (b) Responsibilities of the Military Department. The Military Department shall make installation properties available to other DoD components and Federal agencies in accordance with the procedures set out at 32 **CFR** part 175. The Military Department will keep the LRA informed of other Federal interest in the property during this process. Upon completion of this process the Military Department will notify **HUD** and either the LRA, or the Chief Executive Officer of the State, as appropriate, and publish a list of **surplus** property on the installation that will be available for reuse in the Federal Resister and a newspaper of general circulation in the communities in the vicinity of the installation.

(c) **Responsibilities of the LRA.** The LRA should begin to conduct outreach efforts with respect to the installation as soon as is practicable after the date of approval of closure/realignment of the installation. The local reuse planning process must begin no later than the date of the Military Department's Federal Register publication of available property described at §176.20(b). For those installations that began the process described in this part prior to August 17, 1995, HUD will, on a case by case basis, determine whether the statutory requirements have been fulfilled and whether any additional requirements listed in this part should be required. Upon the Federal Register publication described in §176.20(b), the LRA shall:

(1) Publish, within 30 days, in a newspaper of general circulation in the communities in the vicinity of the installation, the time period during which the LRA will receive notices of interest from State and local governments, representatives of the homeless, and other interested parties. This publication shall include the name, address, telephone number and the point of contact for the LRA who can provide information on the prescribed form and contents of the notices of interest. The LRA shall notify DoD of the deadline specified for receipt of notices of interest. LRAs are **strongly** encouraged to make this publication as soon as possible within the permissible 30 day period in order to expedite the closure process.

- (i) In addition, the LRA has the option to conduct an informal solicitation of notices of interest from public and non-profit entities interested in obtaining property via a public benefit transfer other than a homeless assistance conveyance under either 40 U.S.C. 471 et. seq. or 49 U.S.C. 4715 1-47153. As part of such a solicitation, the LRA may wish to request that interested entities submit a description of the proposed use to the LRA and the sponsoring Federal agency.
- (ii) For all installations selected for closure or realignment prior to 1995 that elected to proceed under Pub. L. 103-421, the LRA shall accept notices of interest for not less than 30 days.
- (iii) For installations selected for closure or realignment in 1995 or thereafter, notices of interest shall be accepted for a minimum of 90 days and not more than 180 days after the LRA's publication under § 176.20(c)(1).

(2) Prescribe the form and contents of notices of interest.

- (i) The LRA may not release to the public any information regarding the capacity of the representative of the homeless to carry out its program, a description of the organization, or its financial plan for implementing the program, without the consent of the representative of the homeless concerned, unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located. The identity of the representative of the homeless may be disclosed.
- (ii) The notices of interest from representatives of the homeless must include:
  - (A) A description of the homeless assistance program proposed, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional housing or housing with no established limitation on the amount of time of residence, food and clothing banks, treatment facilities, or any other activity which clearly meets an identified need of the homeless and fills a gap in the continuum of care;
  - (B) A description of the need for the program;
  - (C) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation;
  - (D) Information about the physical requirements necessary to carry out the program including a description of the buildings and property at the installation that are necessary to carry out the program;
  - (E) A description of the financial plan, the organization, and the organizational capacity of the representative of the homeless to carry out the program; and,

**32 CFR Part 176: Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance**

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- (F) An assessment of the time required to start carrying out the program.
- (iii) The notices of interest from entities other than representatives of the homeless should specify the name of the entity and specific interest in property or facilities along with a description of the planned use.
- (3) In addition to the notice required under §176.20(c)(1), undertake outreach efforts to representatives of the homeless by contacting local government officials and other persons or entities that maybe interested in assisting the homeless within the vicinity of the installation.
  - (i) The LRA may invite persons and organizations identified on the HUD list of representatives of the homeless and any other representatives of the homeless with which the LRA is familiar, operating in the vicinity of the installation, to the workshop described in § 176.20 (c)(3 )(ii).
  - (ii) The LRA, in coordination with the Military Department and HUD, shall conduct at least one workshop where representatives of the homeless have an opportunity to:
    - (A) Learn about the closure/realignment and disposal process;
    - (B) Tour the buildings and properties available either on or off the installation;
    - (C) Learn about the LRA's process and schedule for receiving notices of interest as guided by § 176.20(c)(2); and,
    - (D) Learn about any known land use constraints affecting the available property and buildings.
  - (iii) The LRA should meet with representatives of the homeless that express interest in discussing possible uses for these properties to alleviate gaps in the continuum of care.
- (4) Consider various properties in response to the notices of interest. The LRA may consider property that is located off the installation.
- (5) Develop an application, including the redevelopment plan and homeless assistance submission, explaining how the LRA proposes to address the needs of the homeless. This application shall consider the notices of interest received from State and local governments, representatives of the homeless, and other interested parties. This shall include, but not be limited to, entities eligible for public benefit transfers under either 40 U.S.C. 471 et. seq., or 49 U.S.C. 47151-47 153; representatives of the homeless; commercial, **industrial**, and residential development interests; and other interests. From the deadline date for receipt of notices of interest described at §176.20(c)( 1), the LRA shall have 270 days to complete and submit the LRA application to the appropriate Military Department and HUD. The application requirements are described at §176.30.
- (6) Make the draft application available to the public for review and comment periodically during the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submission to HUD and the appropriate Military Department. A summary of the public comments received during the process of developing the application shall be included in the application when it is submitted.
- (d) Public benefit transfer screening.

The LRA should, while conducting its outreach efforts, work with the Federal agencies that sponsor public benefit transfers under either 40U.S.C.471 et. seq. or 49 U.S.C. 47151-47153. Those agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. Actual recipients of property are to be determined by the sponsoring Federal agency. The Military Departments shall **notify** sponsoring Federal agencies about property that is available based **on** the community redevelopment plan and keep the LRA apprised of **any** expressions of interest. Such expressions of interest are not required to be incorporated into the redevelopment plan, but must be considered.

**Section 176.25 HUD's negotiations and consultations with the LRA.**

HUD may negotiate and consult with the LRA before and during the course of preparation of the LRA's application and during HUD's review thereof with a view toward avoiding any preliminary determination that the application does not meet any requirement of this part. LRAs are encouraged to contact HUD for a list of persons and organizations that are representatives of the homeless operating in the vicinity of the installation.

**Section 176.30 LRA application.**

**(a) Redevelopment plan.** A copy of the redevelopment plan shall be part of the application.

**(b) Homeless assistance submission.** This component of the application shall include the following:

(1) Information about hopelessness in the communities in the vicinity of the installation.

(i) A list of all the political jurisdictions which comprise the LRA.

(ii) A description of the unmet need in the continuum of care system within each political jurisdiction, which should include information about any gaps that exist in the continuum of care for particular homeless subpopulations. The source for this information shall depend upon the size and nature of the political jurisdictions(s) that comprise the LRA. LRAs representing:

(A) Political jurisdictions that are required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction.

(B) Political jurisdictions that are part of an urban county that is required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction. In addition, the LRA shall explain what portion of the homeless population and subpopulations described in the Consolidated Plan are attributable to the political jurisdiction it represents.

(C) A political jurisdiction not described by 5176.30(b)(1)(ii)(A) or 5176.30(b)(1)(ii)(B) shall submit a narrative description of what it perceives to be the homeless population within the jurisdiction and a brief inventory of the facilities and services that assist homeless persons and families within the jurisdiction. **LRAs** that represent these jurisdictions are not required to conduct surveys of the homeless population.

(2) Notices of interest proposing assistance to homeless persons and/or families.

(i) A description of the proposed activities to be carried out on or off the installation and a discussion of how these activities meet a portion or **all** of the needs of the homeless by addressing the gaps in the continuum of care. The activities need not be limited to expressions of interest in property, but may also include discussions of how economic redevelopment may benefit the homeless;

(ii) A copy of each notice of interest from representatives of the homeless for use of buildings and property and a description of the manner in which the **LRA's** application addresses the need expressed in each notice of interest. If the LRA determines that a particular notice of interest should not be awarded property, an explanation of why the LRA determined not to support that notice of interest, the reasons for which may include the impact of the program contained in the notice of interest on the community as described in §176.30(b)(2)(iii); and,

(iii) A description of the impact that the implemented redevelopment plan will have on the community. This shall include information on how the **LRA's** redevelopment plan might impact the character of existing neighborhoods adjacent to the properties proposed to be used to assist the homeless and

## 32 CFR Part 176: Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance

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should discuss alternative plans. Impact on schools, social services, transportation, infrastructure, and concentration of minorities and/or low income persons shall also be discussed.

(3) Legally binding agreements for buildings, **property**, funding, **and/or** services.

- (i) A copy of the legally binding agreements that the LRA proposes to enter into with the representative(s) of the homeless selected by the **LRA** to implement homeless **programs** that fill gaps in the existing continuum of care. The legally binding agreements shall provide for a process for negotiating **alternative arrangements in the event** that an environmental analysis conducted under §176.45(b) indicates that any property identified for transfer in the agreement is not suitable for the intended purpose. Where the balance determined in accordance with §176.30(b)(4) provides for the use of installation property as a homeless assistance facility, legally binding agreements must provide for the reversion or transfer, either to the LRA or to another entity or entities, of the buildings and property in the event they cease to be used for the homeless. In cases where the balance proposed by the LRA does not include the use of buildings or property on the installation, the legally binding agreements need not be tied to the use of specific real property and need not include a reverter clause. Legally binding agreements shall be accompanied by a legal opinion of the chief **legal** advisor of the LRA or political jurisdiction or jurisdictions which will be executing the **legally binding agreements that the legally binding agreements, when executed, will constitute legal, valid, binding, and enforceable obligations on the parties thereto;**
- (ii) A description of how buildings, property, funding, **and/or** services either on or off the installation will be used to fill some of the gaps in the current continuum of care system and an explanation of the suitability of the buildings and property for that use; and,
- (iii) Information on the availability of general services such as transportation, police, and fire protection, and a discussion of infrastructure such as water, sewer, and electricity in the vicinity of the proposed homeless activity at the installation.

(4) An assessment of the balance with economic and other development needs.

- (i) An assessment of the manner in which the application balances the expressed needs of the homeless and the needs of the communities comprising the LRA for economic redevelopment and other development; and,
- (ii) An explanation of how the LRA's application is consistent with the appropriate Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(5) A description of the outreach undertaken by the LRA. The LRA shall explain how the outreach requirements described at §176.20(c)(1) and §176.20(c)(3) have been fulfilled. This explanation **shall** include a list of the representatives of the homeless the LRA contacted during the outreach process.

(c) Public comments. The **LRA** application shall include the materials described at § 176.20(c)(6). These materials **shall** be prefaced with an overview of the citizen participation process observed in preparing the application.

### Section 176.35 HUD's review of the application.

(a) Timing. HUD shall complete a review of each application no later than 60 days after its receipt of a completed application.

(b) Standards of review. The purpose of the review is to determine whether the application is complete and, with respect to the expressed interest and requests of representatives of the homeless, whether **the** application:

- (1) Need. Takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the application for use and needs of the homeless in such communities. HUD will take into consideration the

size and nature of the installation in reviewing the needs of the homeless population in the communities in the vicinity of the installation.

- (2) Impact of notices of interest. Takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation, including:
    - (i) Whether **the plan is feasible** in light of demands that would be placed on available social services, police and fire protection, and infrastructure in the community; and,
    - (ii) Whether the selected notices of interest are consistent with the Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the political jurisdictions in the vicinity of the installation.
  - (3) Legally binding agreements. Specifies the manner in which the buildings, property, funding, and/or services on or off the installation will be made available for homeless assistance purposes. HUD will review each legally binding agreement to verify that:
    - (i) They include all the documents legally required to complete the transactions necessary to realize the homeless use(s) described in the application;
    - (ii) They include all appropriate terms and conditions;
    - (iii) They address the full range of contingencies including those described at §176.30(b)(3)(i);
    - (iv) They stipulate that the buildings, property, funding, and/or services will be made available to the representatives of the homeless in a timely fashion; and,
    - (v) They are accompanied by a **legal** opinion of the chief legal advisor of the **LRA** or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements will, when executed, constitute legal, valid, binding, and enforceable obligations on the parties thereto.
  - (4) Balance. Balances in an appropriate manner a portion or all of the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities.
  - (5) Outreach. Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation and whether the outreach requirements described at §176.20(c)(1) and §176.20(c)(3) have been fulfilled by the LRA.
- (c) Notice of determination.
- (1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to § 176.15(a), send written notification both to DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of §176.35(b). If the application fails to meet the requirements, HUD will send the LRA:
    - (i) A summary of the deficiencies in the application;
    - (ii) An explanation of the determination; and,
    - (iii) A statement of how the LRA must address the determinations.
  - (2) In the event that no application is submitted and no extension is requested as of the deadline specified in §176.20(c)(5), and the State does not accept within 30 days a DoD written request to become recognized as the LR4, the absence of such application will trigger **an** adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at §176.40.
- (d) Opportunity to cure.

## 32 CFR Part 176: Revitalizing Base Closure Communities and Community Assistance-Community Redevelopment and Homeless Assistance

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- (1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under §176.35(c)(1) within which to submit to HUD and DoD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination, effective 90 days from the LRA's receipt of the preliminary determination, that the redevelopment plan fails to meet the requirements of §176.35(b).
- (2) HUD shall, within 30 days of its receipt of the LRAs resubmission, send written notification of its final determination of whether the application meets the requirements of § 176.35(b) to both DOD and the LRA.

### Section 176.40 Adverse determinations.

- (a) Review and consultation. If the resubmission fails to meet the requirements of § 176.35(b) or if no resubmission is received, HUD will review the original application, including the notices of interest submitted by representatives of the homeless. In addition, in such instances or when no original application has been submitted, HUD:
  - (1) Shall consult with the representatives of the homeless, if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;
  - (2) May consult with the applicable Military Department regarding the suitability of the buildings and property at the installation for use to assist the homeless; and,
  - (3) May consult with representatives of the homeless and other parties as necessary.
- (b) Notice of decision
  - (1) Within 90 days of receipt of an LRA's revised application which HUD determines does not meet the requirements of § 176.35(b), HUD shall, based upon its reviews and consultations under §176.40(a):
    - (i) Notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, and;
    - (ii) Notify DoD and the LRA of the extent to which the revised redevelopment plan meets the criteria set forth in §176.35(b).
  - (2) In the event that an LRA does not submit a revised redevelopment plan under § 176.35(d), HUD shall, based upon its reviews and consultations under §176.40(a), notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, either
    - (i) within 190 days after HUD sends its notice of preliminary adverse determination under §176.35(c)(1), if an LRA has not submitted a revised redevelopment plan; or,
    - (ii) within 390 days after the Military Department's Federal Register publication of available property under §176.20(b), if no redevelopment plan has been received and no extension has been approved.

### Section 176.45 Disposal of buildings and property.

- (a) Public benefit transfer screening. Not later than the LRA's submission of its redevelopment plan to DoD and HUD, the Military Department will conduct an official public benefit transfer screening in accordance with the Federal Property Management Regulations (41 CFR part 101-47.303-2) based upon the uses identified in the redevelopment plan. Federal sponsoring agencies shall notify eligible applicants that any request for property must be consistent **with** the uses identified in the redevelopment plan. At the request of the **LRA**, the Military Department may conduct the **official** State and local public benefit screening at any time after the publication of available property described at §176.20(b).
- (b) Environmental analysis. Prior to disposal of any real property, the Military Department shall, consistent with NEPA and section 2905 of the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. 2687 note), complete an environmental impact analysis of all reasonable disposal alternatives. The Military



Department shall consult with the LRA throughout the environmental impact analysis process to ensure both that the LRA is provided the most current environmental information available concerning the installation, and that the Military Department receives the most current information available concerning the LRA's redevelopment plans for the installation.

- (c) **Disposal.** Upon receipt of a notice of approval of an application from HUD under §176.35(c)(1) or §176.35(d)(2), DoD shall dispose of buildings and property in accordance with the record of decision or other decision document prepared under §176.45(b). Disposal of buildings and property to be used as homeless assistance facilities shall be to either the **LRA** or directly to the representative(s) of the homeless and shall be without consideration. Upon receipt of a notice **from** HUD under § 176.40(b), DoD will dispose of the buildings and property at the installation in consultation with HUD and the LRA.
- (d) **LRA's responsibility.** The LRA shall be responsible for the implementation of and compliance with legally binding agreements under the application.
- (e) **Reversions to the LRA.** If a building or property reverts to the LRA under a legally binding agreement under the application, the LRA shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. An LRA may not be required to utilize the building or property to assist the homeless.

